

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH

B.P., A MINOR, BY AND THROUGH THEIR)
PARENT, L.P.; C.L., A MINOR, BY AND)
THROUGH THEIR PARENT, K.L.; O.D., A)
MINOR, BY AND THROUGH THEIR)
PARENT, N.D.; R.J., A MINOR, BY AND)
THROUGH THEIR PARENT, H.J.; L.H., A)
MINOR, BY AND THROUGH THEIR)
PARENT, S.H.; O.P., A MINOR, BY AND)
THROUGH THEIR PARENT, S.P.; E.H., A)
MINOR, BY AND THROUGH THEIR)
PARENT, M.H.; L.S., A MINOR, BY AND)
THROUGH THEIR PARENT, B.P.; G.E., A)
MINOR, BY AND THROUGH THEIR)
PARENT, A.E.; M.B., A MINOR, BY AND)
THROUGH THEIR PARENT, R.B.; AND G.A.,)
A MINOR, BY AND THROUGH THEIR)
PARENT, A.A., EACH A MINOR RESIDENT)
OF THE NORTH ALLEGHENY SCHOOL)
DISTRICT ATTENDING A NORTH)
ALLEGHENY SCHOOL DISTRICT SCHOOL)
OR A PARENT OF THE SAME;)

Plaintiffs,)

vs.)

NORTH ALLEGHENY SCHOOL DISTRICT, A)
PENNSYLVANIA GOVERNMENTAL)
ENTITY; ANDREW CHOMOS, MARCIE)
CROW, ELIZABETH BLACKBURN,)
RICHARD MCCLURE, SCOTT E. RUSSELL,)
ALLYSON MINTON, KEVIN MAHLER,)
ELIZABETH WERNER, SHANNON YEAKEL,)
ALL INDIVIDUAL ELECTED OFFICIALS)
SUED IN THEIR INDIVIDUAL CAPACITY)
AND IN THEIR CAPACITY AS MEMBERS)
OF THE NORTH ALLEGHENY SCHOOL)
DISTRICT BOARD OF DIRECTORS, A)
PENNSYLVANIA ELECTED LEGISLATIVE)
BODY;)

Defendants.)

2:21-CV-01112-MJH

**PLAINTIFFS' MOTION TO COMPEL ENFORCEMENT OF AND COMPLIANCE
WITH THIS COURT'S ORDER OF AUGUST 23, 2021**

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AND NOW, come the Plaintiffs, by and through their attorneys, Alexander Sasken and Kenneth R. Behrend, hereby file the following motion:

1. On August 23, 2021, this Court entered a Temporary Restraining Order, which “enjoined [the North Allegheny School Board] from implementing the result from the August 18, 2021 Special Meeting decision upon the motion to vote on whether to eliminate the universal masking requirement at the August 18, 2021 Special Meeting.”

2. The Order further provided “The effect of this Order maintains the status quo of the August 18, 2021, 2021-2022 Health and Safety Plan Update, as presented by Dr. Friez, in accordance with the June 16, 2021 Health and Safety Plan protocols. Said Plan update provides that the School District “will require face coverings indoors for students, staff and visitors for grades K-12 starting Monday, August 16. (ECF No. 1-9 at p. 4).”

3. The August 23, 2021 Order of this Court reinstated the requirement of universal masking in the North Allegheny School District per the “Health and Safety Plan protocols”, effective as of August 24, 2021.

4. The plaintiff parents have been gathering information because they were discovering that the School District was being lax in enforcing this Court’s Order. There are examples of students, teachers, administrators, and bus drivers openly not wearing masks, or wearing them incorrectly, in defiance to this Court’s Order. See Exhibits 1 - 8. In some instances there appears to be intentional disregard of this Court’s Order by administration and faculty. See e.g. Exhibit 3, the Vice Principal of Carson Middle School on August 27th, and Exhibit 7, a teacher at the School Board Meeting of August 25, 2021.

5. It appears as if the School District has maintained its posture of “strongly recommending” the wearing of masks, as opposed to fully complying with this Court’s Order reinstating the requirement of universal masking. In support of this belief is the following communication regarding the School District’s lax enforcement of universal masking. Upon information and belief on September 1st, there was a meeting with the Superintendent and others, including the Safety, Transparency, and Accountability in Education (S.T.A.E.) Committee for the School District.

6. Posted on the S.T.A.E. FaceBook page is a discussion of the action the School District is planning to take in response to the statewide order mandating universal masking in schools issued by the Acting Secretary for the Pennsylvania Department of Health which will be effective September 7th. See Exhibit 9.

7. According to a post on the S.T.A.E. Facebook page, the School District was not fully enforcing this Court’s Order and apparently had no intention to do so. It is set forth, in pertinent part, that:

Masks: starting September 7, with the mandate taking place students **will be required** to wear masks, if not they will be sent home. **Now that it is a mandate they [the School District] will be working on ways to enforce this more** and staff and others will be informed shortly on this procedure. ...

See Exhibit 9 (emphasis added).

8. The future action of the School District, (“will be required” and “will be working on”) enforcement of universal masking, are actions which the School Board should have implemented immediately following the entry of this Court’s Order on August 23, 2021, and show a lack of concern, disdain for and/or contempt of this Court’s Order.

9. Plaintiffs are requesting the aid of this Court to enforce this Court’s Order,

immediately, and to inquire as to why the School District has not and is not fully complying with this Court's Order of August 23, 2021.

WHEREFORE, it is respectfully requested that this Court determine why the School District is not fully complying with this Court's Order of August 23, 2021, and to enter an Order compelling the School District to come into immediate compliance with the Court's Order of August 23, 2021, and any other relief the Court deems necessary and proper.

Respectfully submitted,
BEHREND LAW GROUP, LLC

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Defendants.)

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ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2021, it is hereby ORDERED, ADJUDGED, and DECREED that Plaintiffs' Motion to Compel Enforcement of and Compliance with this Court's Order of August 23, 2021, is GRANTED as follows:

1. Defendants shall appear before the Court on _____, at _____ o'clock to explain why they are not fully complying with this Court's Order of August 23, 2021;
2. the North Allegheny School District is Ordered to come into immediate compliance with the Court's Order of August 23, 2021; and
3. the Court will determine what additional relief is necessary and proper pending the hearing about the School District's failure to fully comply with the Court's Order of August 23, 2021.

BY THE COURT:

MARILYN J. HORAN
UNITED STATES DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I, Kenneth R. Behrend, hereby certify that a true and correct copy of this Plaintiffs' Motion to Compel Enforcement of and Compliance with this Court's Order of August 23, 2021 was served upon all the parties by U.S. first-class mail, postage pre-paid and/or hand delivery and/or electronically on this 1st day of September, 2021, as follows:

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